



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

August 30, 1991

Ms. Jo Wiginton
Assistant City Attorney
City of Houston
P. O. Box 1562
Houston, Texas 77251-1562

OR91-394

Dear Ms. Wiginton:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12420.

The city of Houston received a written request for copies of internal affairs reports on or investigations of three named officers of the Houston Police Department. You claim the requested information is excepted by section 3(a)(3) of the Open Records Act, which applies to

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

V.T.C.S. art. 6252-17a, § 3(a)(3).

For information to be excepted by section 3(a)(3), two things must be shown. First, it must be established that litigation is pending or reasonably anticipated. Second, it must be demonstrated that the requested information relates to the anticipated litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Under this test, our review is directed to the relation of the subject matter of the requested information to the pending or anticipated litigation, not its relation to the litigation strategy of the attorney representing the governmental body. Open Records Decision No. 551 (1990).

Where the attorney for the governmental body determines that the information relates to pending or anticipated litigation, this office's review will be confined to ascertaining whether that determination is reasonable in light of the facts. *Id.*

You have determined that the requested information relates to a cause pending in the County Criminal Court No. 9 of Harris County to which the state is a party. On the basis of the information you have provided, we believe that this conclusion was not unreasonable. Accordingly, the city may withhold the documents pursuant to section 3(a)(3) at this time. We would add that for purposes of section 3(a)(3), the state is considered to be a party to criminal litigation until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state or federal court. V.T.C.S. art. 6252-17a, § 3(e).

Your letter makes reference to a request for records pertaining to an offense involving the client of the requestor. The copy of the requestor's letter, however, does not make such a request. If the records of the offense are the subject of a separate written request, please advise. This ruling addresses only the request for internal affairs records.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-394.

Yours very truly,



Steve Aragon
Assistant Attorney General
Opinion Committee

SA/mc

Ref.: ID#s 12420, 12435, 12775

cc: Mr. David Myers
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